

ESTTA Tracking number: **ESTTA557709**

Filing date: **09/04/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057403
Party	Defendant The Original Wailers, LLC
Correspondence Address	THE ORIGINAL WAILERS LLC c/o AL ANDERSON GKARMA RECORDING INTL 1239 20TH STREET NO 305 SANTA MONICA, CA 90404 UNITED STATES trademarks@goldbergcohen.com, mcohen@goldbergcohen.com, GlendaC@goldbergcohen.com
Submission	Answer
Filer's Name	AMY J BENJAMIN
Filer's e-mail	trademarks@goldbergcohen.com, mcohen@goldbergcohen.com, GlendaC@goldbergcohen.com
Signature	/amy j benjamin/
Date	09/04/2013
Attachments	ANSWER.pdf(96832 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

BAMBOULA 8, LLC,

Petitioner,

vs.

CANCELLATION NO. 92057403

REG. NO. 4332360

THE ORIGINAL WAILERS, LLC,

Respondent.

ANSWER

Respondent, The Original Wailers, LLC, with an address at c/o Al Anderson, GKarma Recording Intl, 1239 20th Street No. 305, Santa Monica, CA 90404 ("Respondent"), by its undersigned attorneys, hereby Answers the Petition to Cancel filed by Petitioner, Bamboula 8, LLC ("Petitioner").

1. Registrant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 1 of the Petition to Cancel and, therefore, denies the same.

2. Registrant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of the Petition to Cancel and, therefore, denies the same.
3. Registrant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 3 of the Petition to Cancel and, therefore, denies the same.
4. Registrant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 4 of the Petition to Cancel and, therefore, denies the same. Further, to the extent that the records of the PTO reflect that Respondent is the original applicant of Serial No. 85/736,051, such application is void ab initio as Respondent is and was not a legal entity at the time of filing.
5. Registrant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 5 of the Petition to Cancel and, therefore, denies the same. Further to the extent that the records of the PTO reflect that Respondent is the original applicant of Serial No. 85/736,052, such application is void ab initio as Respondent is and was not a legal entity at the time of filing.
6. Registrant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 6 of the Petition to Cancel and, therefore, denies the same. Further, to the extent that the records of the PTO reflect that Respondent is the original applicant of Serial No. 85/736,055, such application is void ab initio as Respondent is and was not a legal entity at the time of filing.

7. Registrant admits that Bob Marley formed the band Bob Marley and the Wailers in 1973 or 1974 and that the band performed until Bob Marley died in 1981. Registrant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 7 of the Petition to Cancel and, therefore, denies the same.
8. Registrant denies the allegation that The Wailers “have completed numerous world tours, playing to an estimated millions of people across the globe since the late 1960s” Registrant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 8 of the Petition to Cancel and, therefore, denies the same.
9. Registrant denies the allegations contained in paragraph 9 of the Petition to Cancel.
10. Registrant admits the allegations contained in paragraph 10 of the Petition to Cancel.
11. Registrant denies the allegations pertaining to Petitioner’s alleged dates of first use.
Registrant denies the remaining allegations contained in paragraph 11 of the Petition to Cancel.
12. Registrant denies the allegations pertaining to Petitioner’s alleged dates of first use.
Registrant denies the remaining allegations contained in paragraph 12 of the Petition to Cancel.

13. Registrant admits that its website contains accurate factual references and information pertaining to “Wailers” and “Marley” but otherwise denies the remaining allegations contained in paragraph 13 of the Petition to Cancel.

14. Respondent denies the allegations contained in paragraph 14 of the Petition to Cancel.

AFFIRMATIVE DEFENSES

1. The Petition to Cancel fails to state a claim for which relief may be granted.
2. Petitioner is not a juristic entity and, therefore, has no standing.
3. Application Serial Nos. 85/736,051; 85/736,052 and 85/736,055 are all void ab initio because Respondent was not a legal entity at the time that these applications were filed.
4. Petitioner is guilty of unclean hands. Petitioner and/or its predecessors in interest have repeatedly sought to enjoin Registrant’s use of its Mark and any mark containing the term “Wailers.” Multiple courts have awarded Registrant the right to continue its use of the term “Wailers” in connection with the goods and services set forth in Registration No. 4,332,360. Nonetheless, Petitioner and/or its predecessors in interest have continued to abuse the justice system, harass Registrant, interfere with Registrant’s contracts with known third parties, and interrupt Registrant’s ability to deliver its services. Accordingly, the Petition to Cancel should be dismissed in its entirety due to Petitioner’s unclean hands.
5. Petitioner is guilty of laches.

6. There is no likelihood of confusion.

WHEREFORE, Registrant respectfully requests that the Petition to Cancel be denied with prejudice in its entirety.

Date: September 4, 2013

GOLDBERG COHEN, LLP

By: _____
Amy J. Benjamin
1350 Avenue of the Americas
4th Floor
New York, NY 10019
Tel: (212) 673-8350
Fax: (212) 658-9718
Email: trademarks@goldbergcohen.com

*Attorneys for Registrant
The Original Wailers, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 4, 2013, the foregoing ANSWER was served on counsel for Petitioner by first class mail, postage pre-paid and addressed as follows:

Mary Sotis
Gayle Denman
Frankfurt, Kurnit, Klein & Selz PC
488 Madison Avenue
New York, NY 10022

Attorneys for Petitioner

/Amy J. Benjamin/
Amy J. Benjamin